

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF WISCONSIN

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MAX TOUHEY,

Plaintiff,

v.

Case No. 24-C-628

EVOLVED HABITAT LLC,

Defendant.

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**ORDER DENYING PLAINTIFF'S MOTION, DKT. NO. [2]**

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Currently before the court is Plaintiff Max Touhey's Motion for an Order Deeming Service to be Complete and for other relief. Dkt. No. 2. For the following reasons, Touhey's motion will be denied.

To begin, the court notes that an "unopposed" motion before a defendant has appeared simply means it is an *ex parte* motion; it does not actually mean it is unopposed. Nonetheless, Touhey is not entitled to the relief he seeks.

Under Federal Rule of Civil Procedure 4(e), plaintiffs may serve defendants by "following state law" service provisions. Fed. R. Civ. P. 4(e)(1). Wisconsin's service provision is contained in Wis. Stat. § 801.11.

If Touhey believes he has effectuated service, he should await an answer. If no answer is filed, he should move for default. If, however, he needs more time to perfect service, then he should move for an extension. Presently, Touhey has taken neither course. He asks the court to deem his service sufficient and only if it fails to do so, grant an extension.

The court will address the issue of whether Touhey has perfected service if and when Evolved challenges his assertion or in response to a motion for default. For the court to make such a determination at this time, however, would be premature. It would also serve no purpose since the defendant would not be bound by a court's determination based on evidence the defendant had no opportunity to challenge. In short, Touhey's motion serves no purpose but to waste judicial resources and clutter the court's docket. For this reason, the Motion for an Order Deeming Service to be Complete and other relief (Dkt. No. 2) is **DENIED**.

Dated at Green Bay, Wisconsin this 11<sup>th</sup> day of September, 2024.

/s William C. Griesbach  
William C. Griesbach  
United States District Judge